

**FILED**

SEP 26 2005

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY                      DEPUTY CLERK

UNITED STATES OF AMERICA

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§

V.

A-05-CR-170 LY

JAMEL WASHINGTON

**REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

TO: THE HONORABLE LEE YEAKEL  
UNITED STATES DISTRICT JUDGE

The Magistrate Court submits this Report and Recommendation to the District Court pursuant to 28 U.S.C. § 636(b)(3). The District Court referred this case to the United States Magistrate Judge for the taking of the defendant's felony guilty plea and for his allocution pursuant to Federal Rule of Criminal Procedure 11.

On September 26, 2005, the defendant and counsel appeared before the Magistrate Court. The undersigned addressed the defendant personally in open court, informed him of the admonishments under Rule 11 of the Federal Rules of Criminal Procedure, and determined that he understood those admonishments.

Pursuant to a plea agreement, the defendant plead guilty to counts one and two of a three count indictment charging him with knowingly and intentionally possessing with intent to distribute a mixture containing cocaine base in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B) and for being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). On September 19, 2005, the Government filed a Notice of Intent to Seek Enhancement of Sentence based upon the defendant's prior felony convictions for delivery of a controlled substance, cocaine, in Cause Number 934302 in the District Court of Travis County, Texas and for possessing a controlled substance, cocaine, with intent to deliver in Cause Number 975574 in the District Court of Travis County, Texas. The undersigned warned the defendant that his prior convictions subject

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him to an enhanced punishment of a mandatory minimum sentence of ten (10) years imprisonment with a maximum of life imprisonment.

The Magistrate Judge finds the following:

1. The defendant, with the advice of his attorney, consented to enter this guilty plea before the Magistrate Judge, subject to final approval and sentencing by the District Judge;
2. The defendant fully understands the nature of the charge against him and possible penalties;
3. The defendant understands his constitutional and statutory rights, understands that his constitutional and statutory rights can be waived, and understands the meaning and effect of the waiver of his constitutional and statutory rights;
4. The defendant waived his right to appeal absent an upward departure and waived his right under 28 U.S.C. § 2255. The defendant did not waive the right to challenge his sentence to the extent that it is the result of a violation of his constitutional rights based on claims of ineffective assistance of counsel or prosecutorial misconduct;
5. The defendant's plea was made freely and voluntarily;
6. The defendant is competent to enter this plea of guilty; and
7. There is a factual basis for this plea.

#### **RECOMMENDATION**

The Magistrate Court **RECOMMENDS** the District Court accept the defendant's guilty plea and, after reviewing the presentence investigation report, enter a Final Judgment of guilt against him.

#### **WARNING**

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are

being made. The District Court need not consider frivolous, conclusive, or general objections. See *Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained within this Report within ten (10) days after being served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations and, except upon grounds of plain error, shall bar the party from appellate review of proposed factual findings and legal conclusions accepted by the District Court to which no objections were filed. See 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S. Ct. 466, 472-74 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

The Clerk is directed to mail a copy of this Report and Recommendation to the parties by certified mail, return receipt requested.

SIGNED this 26<sup>th</sup> day of Septmeber, 2005.



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ROBERT PITMAN  
UNITED STATES MAGISTRATE JUDGE